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OFFICE OF PETITIONS

LAW OFFICE OF IDO TUCHMAN (YOR)
ECM #72212
PO Box 4668
New York NY 10163-4668

In re Application of :
Dan, et al. : DECISION ON PETITION
Application No. 10/727,224 :
Filed: December 3, 2003 :
Atty. Dkt. No.: YOR920020340US1 :

This decision is in response to the petition to withdraw the holding of abandonment under 37 CFR 1.181 filed May 18, 2008.

The petition under 37 CFR 1.181 to withdraw the holding of abandonment is hereby **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." This is not a final agency decision.

This application became abandoned September 7, 2007 for failure to timely submit a proper reply to the non-final Office action mailed June 6, 2007. The non-final Office action set a three month shortened statutory period of time for reply. Notice of Abandonment was mailed January 14, 2008.

Petitioners argue that a reply to the non-final Office action was timely filed September 6, 2007 and have provided a copy of the reply alleged submitted. The copy of the reply includes an amendment and an Electronic Acknowledgement Receipt.

The Office received a communication on September 6, 2007. This communication was matched to the serial number identified by practitioner when uploading the communication via the electronic filing system, namely, serial No. 10/614,523. The communication did not timely reach the intended application (10/727,224) due to practitioners' error. As a result of this error, the application became abandoned.

Correspondence directed to the Patent and Trademark Office concerning a previously filed application for a patent must identify the application number and filing date assigned to that

application by the Office. See, 37 CFR 1.5(a). In the above-referenced application, applicants failed to correctly identify the application by citing an incorrect application number in the response.

In fact, the response contained multiple conflicting identifiers that would have enabled the Office to correctly determine the intended application, including three different conflicting application numbers (10/727,224; 10/614,523, and 09/821,168), two conflicting attorney docket numbers, two conflicting application titles, and two conflicting application filing dates.

These errors, having been made by applicants' duly authorized and voluntarily chosen legal representative, cannot be deemed correctable, minor errors within the meaning of MPEP 502.

In view thereof, the petition to withdraw the holding of abandonment is hereby **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." This is not a final agency decision.

ALTERNATE VENUE

Petitioners may wish to consider filing a petition stating that the entire delay was unintentional. Petitioner's attention is directed to 37 CFR 1.137(b) which provides for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of an issue fee was "unavoidable". An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the required petition fee and reply.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop Petition

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

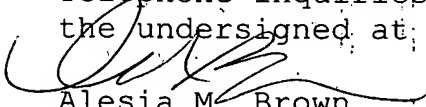
By facsimile:

(571) 273-8300

By hand delivery:

U.S. Patent and Trademark Office
Customer Window, **Mail Stop Petition**
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3205.



Alesia M. Brown
Petitions Attorney
Office of Petitions